IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17172 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KESHUBHAI JERAMBHAI SOLANKI - Petitioner(s)

Versus

DISTRICT MAGISTRATE & 3 - Respondent(s)

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Appearance :

MR PRAVIN GONDALIYA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR JITENDRA MALKAN for Respondent(s) : 3,
M IA SHAIKH for Respondent(s) : 3,
GOVERNMENT PLEADER for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 19/10/2005

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India is directed against the order dated 28th July, 2005 passed by the District Magistrate, Bhavnagar, respondent no.1 herein, detaining the detenue under the provisions of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act. The powers to detain the detenue have been exercised on the ground that the detenue though a licensee under the Act, has committed illegalities and irregularities and such prejudicial activities which has resulted into disruption of the maintenance of

supply of commodities i.e. Blue kerosene meant for a distribution to the rationing card holders belonging to below poverty line, was illegally purchased and sold, contrary to the provisions of the Act (License Control Stock Declaration) Order 1981. It is specifically revealed in the grounds supplied alongwith the order of detention on the same date that under the provisions of Gujarat Essential Commodities (License Control and Stock Declaration), Order 1981, the detenue is having license issued by the Competent Authority, which was subsequently renewed upto 31st December, 2004 and the detenue had applied for renewal by submitting an application on 11.02.2005. On surprise checking on 20.05.2005 and 21.05.2005 by Mamlatdar, Umrala, it was found that by bill no.5315 dated 20.05.2005 as stated by the detenue in his statement dated 21.05.2005 before the Mamlatdar, Umrala, it was admitted that 1800 ltr Blue Kerosene was purchased from one

Boricha Petroleum Agency, Umrala and on the very same day sale of 792 ltr of Kerosene is shown in the record. In the bill-book bearing 421 to 528 the sale of Blue Kerosene is shown. It is also accepted by the detenue that 800 ltr of blue kerosene was unauthorizedly disposed of by the detenue and in fact bogus names of the ration card holders were shown by drawing false bills and thus, indulged into profitering and black marketing of essential commodities which meant for public distribution. That other facts as mentioned and relied upon by the detaining authority are narrated in the subsequent paragraphs, which include about statements of some persons, inquiring nearby villagers by the Mamlatdar, Umrala and staff of the Mamlatdar office. That it also included stock register and other relevant documents seized by the Mamlatdar, Umrala and referred to order dated 31.05.2005 passed by the District Supply Officer, Bhavnagar and order of suspending the

license for the period of 90 days. Besides, the action is taken by the concerned authority by registering C.R.No.30 of 2005 at Umrala Police Station and arrest of the detenue on 14.06.2005. The detenue was released on bail by the competent court on 21.06.2005.

2. Considering the above aspects, the detaining authority has found that alternative remedies under the Act were inadequate, and therefore, to contain the illegal activities of the detenue in the public interest, the detention of the detenue under the provisions of this Act is imperative and imminent.

3. The learned advocate for the petitioner, Mr.Pravin Gondalia has challenged the order of detention mainly on two grounds. Firstly, that has reflected in Para(c) of the grounds, the detaining authority has relied upon the statement of the detenue dated 21.05.2005 and

admitted that he has purchased 1800 ltr Blue Kerosene from Boricha Petroleum Agency which is reflected from bill no.5315 and on the very same day 792 ltr of kerosene was sold. However, in fact, 800 ltr of kerosene was illegally disposed of by the detenue by drawing false bills and infact not supplied it to the card holders. In view of the above, the learned advocate for the petitioner has submitted that the very fact appears that the detaining authority has relied upon and considered the materials which have been seized and as admitted by the detenue and in the compilation of the documents supplied alongwith the grounds of detention to the detenue, serial no.2 of the index mentioned about the receipt issued to the detenue for the record seized by the authority. At page-3 of the compilation it is reflected that Mamlatdar Umrala has issued receipt on 28.05.2005 at Village Bajud for about 12 different items, including the stock register

bill books of essential commodities etc. but the items reflected therein were never supplied to the detenue in support of his argument subsequently he has also contended that after the suspension of license by the Competent Authority there was no action or likelihood that supply of essential commodities can be resumed and again the detenue can indulge into such profitering or blackmarketing activities. Therefore, according to the learned advocate for the petitioner, the subjective satisfaction of the detaining authority stands vitiated and even consideration of further alternative remedy which include cancellation of license, is also not considered in proper perspective before passing the order of detention and thus, collectively it was submitted that the order of detention requires to be quashed and set aside. In support of his arguments about non-supplying of relevant documents to the petitioner he has relied upon the decision reported at 1999 (1)

GLH 432 in the case of Musabhai Sodha Vs. State of Gujarat wherein the backdrop of similar facts, the detenue who was supplied the receipt of the seizure of the stock and not the documents seized by the authority and therefore, submissions were made to quash and set aside the order.

4. Learned A.G.P. Mrs.Hansa B. Punani, has supported the order of detention and on the basis of the affidavit in reply filed by the detaining authority it was submitted that since there was statement dated 21.05.2005 of the detenue himself admitting about various illegalities and irregularities committed by him and that statement was supplied, there was no reason or justification for supplying of other documents seized by the authority.

5. Mr. M.I.A. Shaikh appeared for respondent no.4 has adopted the arguments canvassed by the

learned A.G.P.

6. Considering the relevant facts and on perusal of the records and submissions of the learned advocate for the parties, I am inclined to accept the contention of the learned advocate for the petitioner that right of detenue to make effective representation is infringed under Article 22(5) of the Constitution of India and is substantially affected due to non-supply of the materials seized by the Mamlatdar, Urmala, particularly when the documents enumerated at Page 3 of the Compilation of about 12 items, for which only receipt was issued, and therefore, the vital documents like stock register of A.P.L and of kerosene, bill books, authorization book and other such items, which were not supplied to detenue, has resulted into depriving the detenue of his legal and constitutional right as held by the learned Single Judge of this

Court wherein in para-6 the Court has observed as under:-

> " ... The Ld. AGP, however, contended that in the writ petition it is not specified which material document was not supplied by the detaining authority to the petitioner. In reply to this contention, the Ld.Counsel for the petitioner has pointed out to Item No.6 of Annexure "C" which was inter alia supplied by the detaining authority to the detenue. It is mentioned at Item No.6 that the copy of the receipt issued against the record seized at the time of inspection, dated 23.06.98 was supplied to the petitioner, and not the copies of the record actually seized. The Ld.Counsel for the petitioner has rightly contended that in the grounds of detention the detaining authority has placed specific reliance upon he registers maintained in the handwriting of the petitioner, and since the petitioner is in jail he is unaware of the contents of those registers and it was obligatory for the detaining authority to supply copies of those registers upon which specific reliance was placed in the grounds of detention. Reference to para 14 of the grounds of detention can be made which shows that personal account notebook of the

petitioner was seized in which details of sale of each commodity were found mentioned for the period from 6.5.98 to 16.6.98 and further there was a mention in the said notebook at some places in the handwriting of the petitioner the names of 7 persons to whom date-wise supply and sale of food grains and kerosene was made. Since the detaining authority placed reliance upon this document and it was seized from the custody of the petitioner at the time of surprise inspection, the detaining authority should have supplied its copy to enable the petitioner to furnish effective and complete reply in his defense. Since this was not done it has violated the constitutional guarantee of the petitioner contained in Article 22 (5) of the Constitution of India and it has rendered the impugned detention order illegal."

7. In view of the above, there is no necessity to deal with other contentions raised by the learned advocate for the petitioner. In the facts of the present case also as discussed above, law laid down by this Hon'ble Court is

applicable and non-supply of the relevant documents as enumerated at page 3 of the compilation and item no.2 of the Index of the compilation resulted depriving the detenue of his right to life and liberty guaranteed under Article 21 of the Constitution of India and to make effective representation for expeditious consideration by the authorities, as guaranteed under Article 22(5) of the Constitution of India.

8. For the reason recorded above, the order of the detention passed by the detaining authority on 28.07.2005, the District Magistrate, Bhavnagar District, Bhavnagar, respondent no.1, is quashed and set aside. The detenue Keshubhai Jerambhai Solanki is ordered to be set at liberty forthwith, if not required in any other case by any other authority. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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